

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
Before the Board of Patent Appeals and Interferences

In re Patent Application of

Atty Dkt. MNL-707-19

C# M#

Confirmation No. 6059

REJC

TC/A.U.: 3634

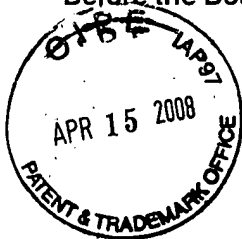
Serial No. 10/523,631

Examiner: Mitchell, Katherine W.

Filed: February 4, 2005

Date: April 15, 2008

Title: HIGH-SPEED INDUSTRIAL DOOR WITH A FLEXIBLE CURTAIN



**Mail Stop Appeal Brief - Patents**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

☐ **Correspondence Address Indication Form Attached.**

☐ **NOTICE OF APPEAL**

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the Examiner twice/finally rejecting applicant's claim(s).

\$510.00 (1401)/\$255.00 (2401) \$

☒ An appeal **BRIEF** is attached in the pending appeal of the above-identified application \$510.00 (1402)/\$255.00 (2402) \$ 510.00

☐ Credit for fees paid in prior appeal without decision on merits \$-( )

☐ A reply brief is attached. (no fee)

☐ Petition is hereby made to extend the current due date so as to cover the filing date of this paper and attachment(s)  
One Month Extension \$120.00 (1251)/\$60.00 (2251)  
Two Month Extensions \$460.00 (1252)/\$230.00 (2252)  
Three Month Extensions \$1050.00 (1253)/\$525.00 (2253)  
Four Month Extensions \$1640.00 (1254)/\$820.00 (2254) \$

☐ "Small entity" statement attached.

Less month extension previously paid on \$-( )

**TOTAL FEE ENCLOSED \$ 510.00**

☒ **CREDIT CARD PAYMENT FORM ATTACHED.**

Any future submission requiring an extension of time is hereby stated to include a petition for such time extension. The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our **Account No. 14-1140**. A duplicate copy of this sheet is attached.

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By Atty: Michelle N. Lester, Reg. No. 32,331

Signature: 



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\* \* \* \* \*

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**APPEAL BRIEF**

Sir:

Applicant submits herewith their Brief on Appeal pursuant to 37 CFR §41.37.

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**(I) REAL PARTY IN INTEREST**

The real party in interest is the assignee, EFAFLEX Tor- und Sicherheitssysteme GmbH & Co. KG, a corporation of Germany.

**(II) RELATED APPEALS AND INTERFERENCES**

On information and belief there are no other prior or pending appeals, interferences, or judicial proceedings (past or present), known to appellant, the appellant's legal representative, or assignee, which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

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### **(III) STATUS OF CLAIMS**

Claims 1-8 and 10-12 remain pending. Claims 1-8 and 10-12 have been rejected. The Examiner's September 25, 2007 final rejection of claims 1-8 and 10-12 is being appealed. A current listing of the claims that are the subject of this Appeal is presented in the Claims Appendix of this Brief.

#### **(IV) STATUS OF AMENDMENTS**

Following the Examiner's final rejection of September 25, 2007, a telephone interview was conducted with Examiner Bradford and her Supervisor, Brian Glessner, on December 17, 2007. No Interview Summary was issued by the Examiner following that telephone interview.

An Amendment and Request for Reconsideration under Rule 116 including an Interview Statement was filed on December 18, 2007, in response to the Examiner's Final Rejection of September 25, 2007 and the December 17, 2008 interview. In particular, claim 5 was amended in response to the Examiner's rejection under 35 USC 112, second paragraph, and arguments were presented challenging the Examiner's prior art rejection.

On January 28, 2008, Examiner Bradford issued an Advisory Action advising that the December 18, 2007 amendment would not be entered because it was not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal. The Examiner also advised that the Request for Reconsideration had been considered but did not place the Application in condition for allowance.

On April 3, 2008, following voice-mail exchanges with undersigned, Examiner Mitchell issued a further Advisory Action advising that the December 18, 2007 amendment would be entered for purposes of appeal. Although not stated in the Advisory Action, Examiner Mitchell advised the undersigned by voice-mail on March 25, 2008 that, upon entry of the December 18, 2007 amendment, the rejection under 35 USC 112, second paragraph, would be withdrawn. The Advisory Action indicated that the prior art rejection was maintained.

**(V) SUMMARY OF CLAIMED SUBJECT MATTER**

With reference to the substitute specification filed March 6, 2006, the invention relates to a fast-moving industrial gate with a gate body covering the associated gateway and having on either side a strap hinge with a multiplicity of hinge members that are interconnected such that they may be oriented at a relative angle, and which are guided by rollers and lateral guides guiding the gate body free of contact (Figures 1-2, page 1, paragraph [0002]; and page 15, lines 15 and 19 - page 16, line 4, referring to the conventional strap hinge, roller and lateral guide construction shown in DE 19915376.

More specifically, as defined in claim 1, the sole independent claim that is the subject of this appeal, the invention provides an industrial gate 1 with a gate body 2 covering a gateway and having on either side a strap hinge 21 with a multiplicity of hinge members 22 that are interconnected such that they may be oriented at a relative angle, which are guided by rollers 23 in lateral guides guiding said gate body 2 free of contact (Figures 1-2, page 1, paragraph [0002]; and page 15, lines 15 and 19 - page 16, line 4, referring to the conventional strap hinge, roller and lateral guide construction shown in DE 19915376), wherein said gate body 2 includes a multiplicity of stiffening profile members 25,26 (page 16, lines 8-12) and a flexible hanging 27 (page 16, lines 12-15), wherein each stiffening profile member 25,26 extends transversely to the lateral guides across said gate body 2 and connects two respective associated hinge members 22 (Figure 1; page 17, lines 3-5), and wherein said flexible hanging 27 substantially covers a full surface of one side of said gate body 2 while extending across stiffening profile members 25 and being affixed at each stiffening profile member 25,26 (Figure 1; page 18, lines 7-9; Figures 3-4; page 16, lines 16-17, line 27).



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**(VI) GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

Per the Advisory Action of April 3, 2008 and Examiner Mitchell's voice-mail message of March 25, 2008, the December 18, 2007 Amendment has been entered and, as a consequence, the rejection of claim 5 under 35 USC §112, second paragraph, has been overcome and withdrawn. Therefore, that ground of rejection is not to be reviewed in this appeal.

Claims 1-8 and 10-12 stand rejected under 35 USC 102(b) as being anticipated by Aquilina.

**(VII)      ARGUMENT**

Claim 1 provides *inter alia* that the gate body has "on either side a strap hinge with a multiplicity of hinge members....which are guided by rollers in lateral guides." Claim 1 further provides that "each stiffening profile member... connects two respective associated hinge members." These features were discussed on page 9 of the as-filed specification and in the substitute specification filed March 6, 2006, are discussed in paragraph [0036] bridging pages 15-16. Figure 2 is a side view of the strap hinge. Paragraph [0036] also makes reference to DE 19915376 as illustrating a typical strap hinge structure used on each side of the gate body of the invention.

Anticipation under Section 102 of the Patent Act requires that a prior art reference disclose every claim element of the claimed invention. See, e.g., Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 806 F.2d 1565, 1574 (Fed. Cir. 1986). While other references may be used to interpret an allegedly anticipating reference, anticipation must be found in a single reference. See, e.g., Studiengesellschaft Kohle, G.m.b.H. v. Dart Indus., Inc., 726 F.2d 724, 726-27 (Fed. Cir. 1984). The absence of any element of the claim from the cited reference negates anticipation. See, e.g., Structural Rubber Prods. Co. v. Park Rubber Co., 749 F.2d 707, 715 (Fed. Cir. 1984). Anticipation is not shown even if the differences between the claims and the prior art reference are insubstantial and the missing elements could be supplied by the knowledge of one skilled in the art. See, e.g., Structural Rubber Prods., 749 F.2d at 716-17.

The cited Aquilina reference simply discloses an industrial gate comprised of stiff door panels linked to each other by pivoting bracket means or hinges. As such, Aquilina does not teach a strap hinge with a multiplicity of hinge members on either side of the gate body. No strap hinges are provided at all in Aquilina. Rather, the transversely extending pivot bracket which joins respective stiff panels are directly guided by rollers in the lateral guides. Thus, Aquilina relates to a fundamentally

different structure than that defined by applicant's claim 1. Furthermore, while Aquilina teaches a hinge 10 extending across the gate body or discrete hinges, as in Figure 9, in neither case does Aquilina teach a multiplicity of stiffening profile members connecting two respective associated hinge members (of strap hinges). Thus, it is clear that Aquilina does not teach or suggest the basic structure defined in applicant's claim 1.

In response to applicant's arguments filed May 23, 2007 regarding a flexible hanging comprising the gate body, the Examiner focused on the limitation to "flexible hanging" and characterized Aquilina as teaching a "flexible hanging" because the stiff panels are "flexible due to the hinges between each panel". In reply, it is respectfully submitted that, to those skilled in this art, "flexible" cannot be properly equated with hinged stiff panels. "Flexible" is understood to mean, for example, "easily bent", "pliable", "elastic". Indeed, the antonym of "flexible" is "stiff" or "rigid". The Examiner's and the Board's attention is directed in this regard to In re Buszard, 84 USPQ2d, 1749 (CAFC 9/27/07).

It is further respectfully submitted that although the Examiner considers the gate body of Aquilina as a whole to be flexible by virtue of stiff panels connected by hinge members, that too is not what applicant has claimed. What applicant has claimed is a flexible hanging extending across stiffening profile members and affixed at each stiffening profile member. As noted above, applicant respectfully submits that Aquilina does not teach stiffening profile members as claimed connecting two respective associated hinge members of strap hinges. But even if the transverse hinges 10 of Aquilina are characterized as stiffening profile members, Aquilina does not teach a flexible hanging affixed to such stiffening profile members. Rather, stiff panels are affixed to hinges 10. Indeed, the structure the Examiner characterizes as a "flexible hanging" includes both the stiff panels and hinges so that the collective structure the Examiner has identified as a "flexible hanging" is not itself further affixed to stiffening

profile members. Thus, the claim limitations are not met by Aquilina, even with the liberal and creative interpretation offered by the Examiner.

As is apparent from the foregoing, Aquilina does not teach strap hinges with a multiplicity of hinge members on each side of a gate body, does not teach a multiplicity of stiffening profile members connecting to respective associated hinge members and does not teach a flexible hanging, much less a flexible hanging extending across stiffening profile members and affixed at each stiffening profile member.

For all the reasons advanced above, it is respectfully submitted that the claims presented are not anticipated by Aquilina.

In the Advisory Action of January 28, 2008, the Examiner advised that the Request for Reconsideration presented December 18, 2007 had been considered but did not place the application in condition for allowance because "the claims still read on the cited [sic; cited] references because no amendments to the claims were made." As noted above, independent claim 1 specifically limits the gate of the invention to including strap hinges with a multiplicity of hinge members on each side of a gate body, a multiplicity of stiffening profile members connecting two respective associated hinge members, and a flexible hanging. Thus, the claims as presented do not read on the Aquilina reference because Aquilina as noted above does not illustrate, teach or suggest strap hinges with a multiplicity of hinge members on each side of the gate body, does not teach or in any way suggest a multiplicity of stiffening profile members connecting respective associated hinge members, and a flexible hanging extending across such stiffening profile members and affixed at each stiffening profile member. Thus, the Examiner has not established a *prima facie* case of anticipation of applicant's claims and has not asserted, much less established, that the claimed invention would have been obvious from Aquilina.

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In the Advisory Action of April 3, 2008, the Examiner advised that the claims are believed to read on the cited references [because] "flexible" would include hinged portions. As noted above, interpreting "flexible hanging" as including hinges would be nonsensical because claim 1 provides that the flexible hanging is affixed to the stiffening profile members, which can only be interpreted as the hinges 10 in Aquilina. So the Examiner's interpretation of flexible hanging means that a flexible hanging (including hinges) extends across and is affixed to "hinges" – which is not the case in the invention or in Aquilina.

In view of the foregoing, there is simply no proper basis for the rejection of applicant's claims 1-8 and 10-12 under 35 USC §102(b) based on Aquilina.

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**CONCLUSION**

For all the reasons advanced above, reversal of the Examiner's Rejection and allowance of all pending claims is solicited.

Respectfully submitted,

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**(VIII) CLAIMS APPENDIX**

1. (Previously presented) Industrial gate with a gate body covering a gateway and having on either side a strap hinge with a multiplicity of hinge members that are interconnected such that they may be oriented at a relative angle, which are guided by rollers in lateral guides guiding said gate body free of contact,

wherein said gate body includes a multiplicity of stiffening profile members and a flexible hanging,

wherein each stiffening profile member extends transversely to the lateral guides across said gate body and connects two respective associated hinge members, and

wherein said flexible hanging substantially covers a full surface of one side of said gate body while extending across stiffening profile members and being affixed at each stiffening profile member.

2. (Previously presented) The industrial gate in accordance with Claim 1, wherein said flexible hanging is subdivided into several hanging segments.

3. (Previously presented) The industrial gate in accordance with Claim 1, wherein said flexible hanging is affixed across an entire width of the gate at a respective adjacent stiffening profile member.

4. (Previously presented) The industrial gate in accordance with Claim 1, wherein said flexible hanging is affixed at said respective adjacent stiffening profile member in positive engagement.

5. (Previously presented) The industrial gate in accordance with Claim 1, wherein said flexible hanging includes in a range of each stiffening profile member a

reinforcing strip that engages in an undercut groove at said associated stiffening profile member.

6. (Previously presented) The industrial gate in accordance with Claim 5, wherein in portions of said gate body in which said flexible hanging extends across a stiffening profile member, the reinforcing strip is welded to said flexible hanging.

7. (Previously presented) The industrial gate in accordance with Claim 5, wherein one respective reinforcing strip is formed on edge sides of said flexible hanging or of each hanging segment thereof, respectively, which runs in parallel with said associated stiffening profile member.

8. (Previously presented) The industrial gate in accordance with Claim 1, wherein ends of each stiffening profile member engage in said hinge members so as to be accommodated therein when viewed in a direction of depth of said gate body, with sides thereof facing said flexible hanging substantially being flush with surfaces of said hinge members.

Claim 9. (Canceled).

10. (Previously presented) The industrial gate in accordance with Claim 1, wherein in a closed condition of said gate body there are a hinge plane and a hanging plane, wherein said hinge plane is substantially defined by pivot axes of said hinge members that are interconnected such that they may be oriented at a relative angle, and said hanging plane is substantially defined by an extension of a major surface of said flexible hanging, with said hinge plane and said hanging plane not coinciding.



11. (original) The industrial gate in accordance with Claim 10, characterized in that said hinge plane and said hanging plane are arranged in immediate vicinity of each other.

12. (Previously presented) The industrial gate in accordance with Claim 1, characterized in that said flexible hanging is affixed to said stiffening profile members in respective locations adjacent a pivot axis of said hinge members that are interconnected such that they may be oriented at a relative angle.

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**(IX) EVIDENCE APPENDIX**

(NONE)

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**(X) RELATED PROCEEDINGS APPENDIX**

(NONE)